

SHD Paraphrased Regulations - Other Programs

920 Adoption Assistance Program

920-1

It is the intent of the Legislature to benefit special needs children residing in foster homes by providing the stability and security of permanent homes, and in so doing, achieve a reduction in foster home care. It is not the intent to increase expenditures but to provide for payments to adoptive parents to enable them to meet the needs of special needs children. (Welfare and Institutions Code §16115.5)

This section was amended effective October 11, 1993 to change the term "special needs children" to "children who meet the criteria established in §§16116, 16120 and 16121."

920-1A REVISED 7/06

State law provides as follows:

"A child shall be eligible for Adoption Assistance Program benefits if all of the conditions specified in subdivisions (a) through (g) are met or if the conditions specified in subdivision (h) are met:

"(a) The child has at least one of the following characteristics that are barriers to his or her adoption:

"(1) Adoptive placement without financial assistance is unlikely because of membership in a sibling group that should remain intact or by virtue of race, ethnicity, color, language, age of 3 years older, or parental background of a medical or behavioral nature that can be determined to adversely affect the development of the child.

"(2) Adoptive placement without financial assistance is unlikely because the child has a mental, physical, emotional or medical disability that has been certified by a licensed professional competent to make an assessment and operating within the scope of his or her profession. This paragraph shall also apply to children with a developmental disability pursuant to subdivision (a) of Section 4512 including those determined to require out-of-home nonmedical care as defined in Welfare and Institutions Code Section 11464.

"(b) The need for adoption subsidy is evidenced by an unsuccessful search for an adoptive home to take the child without financial assistance as documented in the case file of the prospective adoptive child. The requirement for this search shall be waived when it would be against the best interest of the child because of the existence of significant emotional ties with prospective adoptive parents while in the care of these persons as a foster child.

(c) The child meets either of the following criteria:

(1) At the time a petition for an agency adoption, as defined in Section 8506 of the Family Code, or an independent adoption, as defined in Section 8524 of the Family Code, is filed, the child has met the

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requirements to receive federal supplemental security income benefits pursuant to Subchapter 16 (commencing with Section 1381) of Chapter 7 of Title 42 of the United States Code, as determined and documented by the federal Social Security Administration.

- "(2) The child is the subject of an agency adoption as defined in Section 8506 of the Family Code and was any of the following:
- "(A) Under the supervision of a county welfare department as the subject of a legal guardianship or juvenile court dependency,
 - "(B) Relinquished for adoption to a licensed California private or public adoption agency, or the department, and would otherwise have been at risk of dependency as certified by the responsible public child welfare agency, or
 - "(C) Committed to the department pursuant to Section 8805 or 8918 of the Family Code.
- "(d) The child is under 18 years of age, or under 21 years of age and has a mental or physical handicap which warrants the continuation of assistance.
- "(e) The adoptive family is responsible for the child pursuant to the terms of an adoptive placement agreement or a final decree of adoption and has signed an adoption assistance agreement.
- "(f) The adoptive family is legally responsible for the support of the child and the child is receiving support from the adoptive parent.
- "(g) The department or the county responsible for determining the child's Adoption Assistance Program eligibility status and for providing financial aid, and the prospective adoptive parent, prior to or at the time the adoption decree is issued by the court, have [sic] signed an adoption assistance agreement that stipulates the need for, and the amount of, Adoption Assistance Program benefits.
- "(h) A child shall be eligible for Adoption Assistance Program benefits if the child received Adoption Assistance Program benefits with respect to a prior adoption and the child is again available for adoption because the prior adoption was dissolved and the parental rights of the adoptive parents were terminated or because the child's adoptive parents died."

(Welfare and Institutions Code §16120, as amended effective January 1, 2000 to add, and make reference to, Subsection (h); see also Title 22, California Code of Regulations (CCR) Handbook §35326(a)(1))

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920-2

State law (effective August 20, 1976 through September 30, 1982) relating to Aid to Adoptive Children provided that it was not the intent of Chapter 1724 of the Statutes of 1971 to increase expenditures but to provide for temporary payments to selected adoptive parents in the same way that such parents would be eligible to receive aid payments if they were to apply for a boarding home license. (Welfare and Institutions Code §16115.5 repealed effective September 30, 1982)

920-3

State law provides that children on whose behalf an aid for adoption of children agreement had been executed prior to October 1, 1982, shall continue to receive aid for the adoption of children benefits in accordance with the terms of that agreement. (Welfare and Institutions Code §16121(c))

This aid for adoption of children agreement may be renewed, provided total benefits do not exceed five years. Prior to the end of the five-year period, if there is a continuing need related to a chronic health condition of the child which necessitated the initial financial assistance, a parent may petition the department or the designated licensed adoption agency to continue financial assistance. The amount of financial assistance and the time period for which it may be given shall be determined by the department or the agency but shall not exceed the age of majority of the child. Prior to the expiration of the extension period, if there is a continuing need, the parent may petition the department or the designated licensed adoption agency for a new period or termination. The department or agency shall make its determination regarding the financial ability of the parents to meet the continuing medical needs of the child, related to the child's health condition at the time of adoption, taking into consideration community resources.

Aid for adoption of children agreements were governed by Title 22, California Code of Regulations, §30671(b)(5) which provided that assistance may be continued after the eighteenth birthday and shall be reviewed annually provided the child is unmarried, attending school full time, and has not received five years of program benefits.

920-4

Aid for Adoption of Children under state law shall be known as the Adoption Assistance Program. (Welfare and Institutions Code §16115)

920-7

Prior to October 11, 1993, state law provided that for purposes of AAP a "special needs" child meant a child whose adoption without financial assistance would be unlikely because of adverse parental background, ethnic background, race, color, language, membership in a sibling group which should remain intact, mental, physical, medical or emotional handicaps or aged three years or more. The provisions of this chapter applied only to special needs children. Prior to October 1, 1982, a hard-to-place child was a child who was disadvantaged because of adverse parental background, a handicapped child, or a child of the age of three years or more. (Welfare and Institutions Code §16116 repealed effective October 11, 1993)

921-1

The adoption assistance agreement shall contain the following:

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- (1) The child's adoptive name and the name(s) of the adoptive parent(s).
 - (2) The amount and duration of financial assistance.
 - (3) The specific needs and services for which payment is authorized.
 - (4) That the existence of a characteristic which is a barrier to the child's adoption without subsidy has been confirmed by the agency.
 - (5) That, until termination of financial assistance, the adoptive parents shall notify the child's agency immediately regarding the following:
 - (A) A change in their mailing address.
 - (B) The child begins to receive unearned income.
 - (C) They are no longer responsible for the support of the child.
 - (D) They are no longer supporting the child.
 - (6) That a failure to report as specified in (5)(B), (C) and (D) may result in a collectible overpayment.
 - (7) Continuation of payment depends upon continued legal responsibility of the adoptive parents for the support of the child and upon continued receipt by the child of that support.
 - (8) The AAP payment will be reduced if the AAP benefit amount exceeds the FC maintenance payment for the child if the child had remained in a foster family home.
 - (9) The AAP benefit may be reduced if the child receives other unearned income.
 - (10) The child is eligible for Medi-Cal services.
 - (11) The child is eligible for Title XX services, which are public social services as set forth in §§30-000 and 31-000.
 - (12) The procedure for recertification of the adoption assistance agreement, the AD 4320.
 - (13) The agreement remains effective regardless of the state in which the adoptive parents reside.
 - (14) Any additional services and assistance which are to be provided as part of the agreement.
- (Title 22, California Code of Regulations (CCR) §35337(a), as revised effective September 6, 2001)

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921-1A

Prior to November 1, 1994, the contents of the adoption assistance agreement included the following language:

(a) The agreement shall specify the information required by 42 USC 673 and 695; 45 CFR 1356.40; and Welfare and Institutions Code (W&IC) §§16120 and 16121;

(1) These sections require that the agreement specify the following:

(A) The amount of financial assistance;

(B) The duration of financial assistance;

(C) The effective date of payment;

(D) That the existence of a medical condition or physical, mental, or emotional handicap or other condition which makes the child a special needs child has been confirmed by the agency;

(E) That, until termination of financial assistance, the adoptive parents must notify the child's agency immediately regarding the following:

1. Any substantial change in their financial circumstances;

2. Any change in the child's needs;

3. Any change in their place of residence;

(F) The agency and the adoptive parents must reevaluate, and if appropriate, adjust the amount of assistance when the adoptive parents report any of the changes specified in (E);

(G) The county must provide the family with prior written notice of the date payments will be discontinued;

(H) Continuation of payment depends upon continued legal responsibility of the adoptive parents for the support of the child and upon continued receipt by the child of that support;

(I) The child is eligible for Medi-Cal services;

(J) The child is eligible for Title XX services;

(K) The procedure for recertification of the adoption assistance agreement;

(L) The agreement remains effective regardless of the state in which the adoptive parents reside;

(M) Any additional services and assistance which are to be provided as part of the agreement.

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(Title 22, California Code of Regulations §35337, repealed effective October 31, 1994)

921-2

Under federal law, the amount of an AAP payment "may be readjusted periodically." (42 United States Code §673(a)(3)) Under state law, an adoption assistance agreement shall be reauthorized through a "reassessment" ("recertification" prior to January 1, 2000) process to occur no less frequently than every two years. (W&IC §16120.05 as amended effective January 1, 2000)

921-2A

Prior to December 1, 2000, the following state regulations were in effect.

The agency shall determine the duration of time between each reauthorization, and the authorization shall be in effect no longer than the shortest of the following periods:

(A) Two years;

(B) 18 months if the child is placed in out-of home care and is receiving a grant greater than the basic care foster care grant;

(C) The expected duration of the services identified in §35333(a)(1)(B) if the child is receiving a grant based on a specialized care increment; or

(D) A time period ending at the end of the month in which the child becomes 18 years of age, or if the agency has determined that the child has a mental or physical condition that warrants the continuation of assistance, 21 years of age.

(Title 22, California Code of Regulations (CCR) §35333(d)(1))

The AAP recertification process determines whether the child continues to be eligible for assistance and whether any change in assistance is indicated. Eligibility is seldom a recertification issue because a child continues to be eligible for AAP until age 18 (or, in some cases, age 21) unless the adoptive parents cease to support the child or their parental rights are terminated.

If the recertification review suggests that a change in AAP benefits is indicated, the agency should discuss this possible change with the parents. If, as a result of this negotiation, the parents concur with the change, the new AAP Agreement (AD 4320) would reflect this change. With limited exceptions, if the parents do not concur with a suggested change, the AAP benefit would remain at the level specified in the prior agreement. For example, the parents may have concurred with a planned future benefit change when they completed the prior agreement.

Only in limited circumstances may the agency decrease AAP without the parents' concurrence. These limited circumstance include decreases to avoid exceeding the maximum AAP payment, the failure to provide authorized services, the collection of overpayments, and ineligibility. These circumstances are specified in regulation at Title 22, CCR §35343(b)(3).

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(All-County Letter No. 98-03, January 7, 1998, p. 4; these regulations and policies were revised effective December 1, 2000 when a new Title 22, CCR §35343 was issued and amended))

921-3

"The documentation required for recertification, which includes completion of the Recertification Information--Adoption Assistance Program Form (AAP3), is usually readily accessible to the family. Agencies should strive to administer this requirement in a manner which will cause no undue hardship on families during the recertification process. Agencies should not impose more than minimally necessary documentation requirements on families unless facts have come to light which suggest a more thorough review of the child's and family's circumstances is warranted. For example, adequate documentation for unchanged payment reauthorization, in the case of a child with a chronic, stable medical condition, may be as little as a brief letter from a licensed clinician indicating no change from an earlier, more comprehensive diagnosis, accompanied by a copy of the family's most recent tax return verifying no substantial change in family financial circumstances." (All-County Letter No. 98-03, January 7, 1998, p. 5)

922-1

State law, as amended effective January 1, 2000, requires the CDSS or licensed adoption agencies to inform the prospective adoptive family that they will continue to receive benefits in the agreed upon amount unless one of the following occurs:

- (1) The adoptive parents are no longer legally responsible for the support of the child.
- (2) The child is no longer receiving support from the adoptive family.
- (3) The adoption assistance payment exceeds the amount the child would have been eligible for in a licensed foster home.
- (4) The adoptive parents demonstrate a need for an increased payment.
- (5) The adoptive parents voluntarily agree to reduce or terminate payments.
- (6) The adopted child has an extraordinary need that was not anticipated at the time the amount of the adoption assistance was originally negotiated.

(Welfare & Institutions Code (W&IC) §16119(f); All-County Information Notice No. I-47-00, April 19, 2000)

922-2

At the time an application for adoption of a child who is potentially eligible for AAP benefits is made, the Department or licensed adoption agency shall provide the prospective adoptive family with written information: As to the availability of AAP benefits, with an explanation of the difference between AAP and FC payments; and as to the availability of reimbursement for the nonrecurring expenses incurred in the adoption of the AAP eligible child. (Welfare and Institutions Code (W&IC) §16119(a), as amended effective October 11, 1993)

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Effective October 10, 1999 Assembly Bill (AB) No. 1225 required agencies to provide prospective adoptive parents with additional information, in writing, about the availability of AAP benefits at the time of application and again immediately before the finalization of the adoption decree. (All-County Letter No. 99-104, December 13, 1999, implementing AB 1225, Ch. 905, Stats. of 1999; which amended W&IC §16119(a))

922-2A

Effective October 10, 1999, agencies are required to encourage families to sign a deferred adoption assistance agreement when those families choose not to sign an AAP agreement on behalf of their potentially eligible child(ren). (All-County Letter No. 99-104, December 13, 1999; Welfare & Institutions Code (W&IC) §16119(b))

922-3

The adoption assistance agreement shall specify the responsibility of the adopting family for reporting changes in circumstances. (Welfare and Institutions Code (W&IC) §16120.05, added effective October 11, 1993) The responsibility to report changes includes reporting changes in circumstances that might negatively affect the adopting family's ability to provide for the identified needs of the child. (W&IC §16120.05, effective January 1, 2000)

922-4

By the time of adoptive placement of the child, the agency shall have given a written medical report on the medical background of the child and the child's birth parents to the prospective adoptive parents, in accord with Family Code §8706. (Title 22, California Code of Regulations §35209(a), revised to §35195(a) effective May 3, 1999)

The Family Code requires a written medical report on the child, containing all known diagnostic information, current medical reports, and psychological evaluations. Scholastic information and all known information regarding the child's developmental history and family life must also be provided.

The agency shall also provide the medical background of the child's biological parents so far as that is ascertainable.

The prospective adoptive parents shall acknowledge, in writing, receipt of the reports.

(Family Code §8706)

922-5

State regulations require the counties to make certain regulations, laws, and other policy material available to the public. The counties must do the following:

.1 One set of the regulations and handbook materials (including All-County Letters) of the Department of Social Services, the Welfare and Institutions Code (W&IC), the Health and Safety Code, and other laws relating to any form of public social service must be made available to the public during regular office hours in each central or district county office administering public social services and in each local or regional office of the department. (W&IC §10608)

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.2 These references shall be placed in the waiting or reception room or in a location available and convenient for public use.

.3 A sign shall be prominently posted in each waiting/room or reception room in appropriate languages as follows:

"Rules and regulations of the State Department of Social Services are available for your use. Please ask for the materials or manuals you wish to see."

.4 A signout book should be used to prevent loss of regulations or other materials for public use. The maintenance of the reference materials in a current and usable condition is a condition of compliance with the statute.

(Handbook §17-017)

922-6

Prior to September 6, 2001, state regulations provided that:

The agency, as part of the negotiation involved in establishing the AAP payment, shall inform the adopting parents that the AAP benefit does not include payment for:

1. Respite care.
2. Educational services.
3. Capital improvements to real property, such as room additions.
4. Purchase or lease of vehicles.
5. Health care services, including medications.
6. Attorney's fees.

(Title 22, CCR §35333(e)(6)(C))

922-7

The agency responsible for authorizing AAP payments shall notify the county responsible for payment regarding any of the following events, as these events require that the county send the adoptive parent a Notice of Action:

- (1) Denial of request for AAP benefits.
- (2) Completion of a deferred payment agreement.
- (3) Authorization of the initial grant.
- (4) Completion of the recertification process.
- (5) Payment termination.

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(6) An overpayment requiring collection.

(7) Any change in grant amount.

(Title 22, CCR §35345(a), as modified without substantive change effective August 1, 1998)

922-8

The adoption caseworker shall base the assessment of the child's needs and required level of care on:

1. The direct observation of the child.
2. Information in the child's case record, including birth history and psychological, medical, and other assessments completed by licensed professionals.
3. Information about the child based on application of the county's FC specialized care assessment instrument or any specialized Foster Care increment previously approved for the child.
4. Information provided by the adoptive parents.

(Title 22, CCR §35333(b)(1)(A), as revised effective September 6 2001)

922-10

Prior to October 31, 1994, state regulations pertaining to the determination of payment amount and duration in the AAP program provided as follows:

(a)(2) Prior to completing an adoption assistance agreement, the agency and the adoptive parent(s) shall determine those needs of the special needs child, resources available to meet those needs, and the amount and probable duration of AAP benefits.

(A) Resources to be considered shall include:

- (1) The prospective adoptive parents' financial resources and needs of the family;
- (2) Regional centers for the developmentally disabled;
- (3) California Children's Services;
- (4) In-Home Supportive Services;
- (5) Other private or public resources which may offer financial, medical, psychological, educational, or other assistance.

(Title 22, California Code of Regulations, §35333, repealed effective October 31, 1994)

923-1

The agency responsible for authorizing AAP payments shall notify the county responsible for payment regarding any of the following events, as these events require

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that the county send the adoptive parent a Notice of Action:

- (1) Denial of request for AAP benefits.
- (2) Completion of a deferred payment agreement.
- (3) Authorization of the initial grant.
- (4) Completion of the recertification process.
- (5) Payment termination.
- (6) An overpayment requiring collection.
- (7) Any change in grant amount.

(Title 22, CCR §35345(a), as modified without substantive change effective August 1, 1998)

926-1

For AAP agreements signed on or after October 1, 1992, the payment rate shall not exceed the age-related state-approved basic foster family home rate for a child placed in a licensed or approved family home pursuant to Welfare and Institutions Code (W&IC) §11461(a) through (d). (W&IC §16121(a))

Per All-County Information Notice (ACIN) No. I-50-92, September 23, 1992, the W&IC section cited above does not apply to any but initial AAP agreements signed on or after October 1, 1992. AAP agreements signed before October 1, 1992 are governed by W&IC §16121.05(b). (Title 22, California Code of Regulations §35326(b))

926-2

From October 11, 1993 to January 1, 2000, state law provided as follows:

The amount of any AAP benefit shall be a negotiated amount based upon the needs of the child and the ability of the family to meet the child's needs. There shall be no means test used to determine an adoptive family's eligibility for AAP. Statewide median income data shall be used as a guideline in the negotiation process. Actual living expenses, including any unusual expenses, shall be considered in evaluating the benefit level.

All non-cash AAP recipients may be eligible for Medi-Cal benefits.

(Welfare and Institutions Code §16119(c), as amended effective October 11, 1993, and revised and renumbered effective January 1, 2000)

926-2A

Prior to state law changes and the *Mark A. v. Davis* settlement, state law provided:

In applying the statewide median income guideline, agencies shall be guided by the following assumptions:

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(1) Families with income below the statewide median income may qualify for an amount up to the state-approved basic foster care rate and any state-approved specialized care increment for which the child would be eligible in foster care; and

(2) Families with income above the statewide median income, unless actual family living expenses mitigate the family's ability to meet the child's basic needs, shall be considered to be able to meet the normal child-rearing expenses encompassed in the state-approved basic foster family home care rate, but may qualify to receive benefits in an amount up to the state-approved specialized care increments the child would be eligible to receive if in foster care.

(Welfare & Institutions Code (W&IC) §16119(d), revised effective January 1, 2000 to delete references cited above to statewide median income; All-County Letter No. 99-101, December 1, 1999, setting forth the terms of the *Mark A. v. Davis* lawsuit)

An initial conclusion, based solely on a comparison of family income to statewide median income data, that no assistance is warranted often may change after the required consideration of the family's actual living expenses, including any documented, unusual expenditures necessary for the health, safety, care, or education of any family member which are not reimbursed by other sources. Such expenses may include, but are not limited to, unusually high expenditures for housing, utilities, or transportation or the cost of health, safety, education and above normal care for any family member, including other adopted children. (Title 22, California Code of Regulations (CCR) §35333(a)(3)(D), revised and renumbered effective December 1, 2000)

Consideration of family income comes into play only in determining the family's need for financial assistance in meeting usual, basic child rearing costs encompassed in the state-approved basic foster care rate. Unless other community resources are available to meet a child's special needs which would be paid for by the state-approved foster care specialized care increments, AAP benefits should be authorized for any adopted child to pay for the adoptive family's costs associated with those special needs up to the amount of the specialized care increment.

However, even if it is determined no cash payment is required at the time of adoption in order for the adoptive family to meet the AAP eligible child's needs, a deferred payment AAP agreement should be signed prior to finalization of the adoption to ensure continued eligibility and the family's ability to receive benefits in the future should the child's needs or family circumstances change such that cash assistance is required to meet the child's needs. Similarly, if the family requires only Medi-Cal benefits for the child, a zero dollar grant AAP agreement should be completed.

(All-County Letter No. 98-03, January 7, 1998, p.3)

926-2B

State law provides:

The amount of an adoption assistance cash benefit, if any, shall be a negotiated amount based on the needs of the child and the circumstances of the family. "There shall be no means test used to determine an adoptive family's eligibility for the AAP. Where the eligible child does not require a cash benefit, Medi-Cal eligibility may be established for

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the child." (Welfare & Institutions Code (W&IC) §16119(d)(1), effective January 1, 2000)

The "circumstances of the family" include the family's ability to incorporate the child into the household in relation to the lifestyle, standard of living, and future plans and to the overall capacity to meet the immediate and future plans and needs, including education, of the child. (W&IC §16119(d)(2), effective January 1, 2000)

926-4

Prior to December 1, 2000, state regulations provided that:

When the AAP child is living in the home of the adoptive family, and the child is not a client of a California Regional Center for the Developmentally Disabled, the maximum AAP payment shall be:

1. The age-related state-approved basic foster family home care rate if the child has no needs which would qualify the child for a specialized care increment in a foster family home; or
2. The age-related state-approved basic foster family home care rate plus a specialized care increment, if the child has such needs and those needs are being provided by the adoptive family.

(Title 22, California Code of Regulations, §35333(b)(1)(A)1.-3., revised and renumbered effective December 1, 2000)

926-4A

As of September 6, 2001, the AAP benefit shall be determined as follows:

- > The responsible public agency shall assess the child's needs. (Title 22, California Code of Regulations (CCR) §35333(b))
- > Such agency shall determine the maximum AAP benefit for which the child is eligible. (Title 22, CCR §35333(c))
- > The agency shall determine the state-approved FC maintenance rate as follows:

Step 1:

- If the child is living in the adoptive family's home, the agency shall assume that, but for the adoptive placement, the child would be living in a licensed foster family home. If the child is placed for adoption within the financially responsible county, the AAP benefit shall be based on the child's foster care maintenance payment, not to exceed the child's age-related, state approved foster family home care rate. If placed in California outside the responsible county, the AAP benefit shall be calculated as above for both counties, and the higher rate shall be used. If the child is placed outside California, the AAP benefit shall be calculated for both the responsible county and the payment rate in the host state, but cannot exceed the California limitations on payment.

- If the child has any special needs which would qualify for a specialized care increment, the AAP benefit shall include the applicable state-approved specialized care increment

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in addition to the FC maintenance payment. When the child is placed for adoption outside the responsible county, the higher of that county's rate and the host county's rate shall be used.

- If the child is a client of a California Regional Center (CRC) for the Developmentally Disabled, the maximum rate shall be the foster family home rate formally determined by the Regional Center, using the facility rates established by the California Department of Developmental Services. CRC clients who leave California shall be able to continue to receive their AAP benefits based on the most recent level of need assessed by the CRC. (Title 22, CCR §35333(c)(1)(B) and (C))

Step 2:

- The agency shall determine the amount of income received by or on behalf of the child. Income includes, e.g., SSI/SSP, social security benefits, income from an inheritance or trust. (Title 22, CCR §35333(c)(2)) Note: As of July 25, 2002, do not count SSI as unearned income for children who are receiving federal AAP benefits. (All-County Letter No. 02-56, July 25, 2002)

Step 3:

- The maximum AAP benefit is determined by subtracting the amount in Step 2 from the amount in Step 1. (Title 22, CCR §35333(c)(3))

> The agency shall determine the family's circumstances, including family lifestyle, standard of living, and future plans and overall capacity to meet the immediate and future plans and needs, including educational needs, of the child. The agency should allow the family to make its own choices regarding lifestyle, standard of living, or future plans. (Title 22, CCR §35333(d), referencing W&IC §16119(d)(2))

> The agency shall negotiate the amount of AAP in good faith with the adoptive family. The agency shall base the negotiated AAP benefit on the needs of the child and the circumstances of the family through discussion with the parents. In this discussion, the agency shall encourage the adoptive parents to request the AAP benefit required to meet the child's needs, and shall advise the parents of the maximum AAP limits. (Title 22, CCR §35333(e))

> The agency shall include a written summary of these negotiations and discussions in the child's AAP file. (Title 22, CCR §35333(e)(5))

> The amount of the AAD benefit shall be between zero and the amount allowable. (Title 22, CCR §35333(e)(6))

> The agency shall authorize the AAP payment, which shall be for two years from the date the Adoption Assistance Agreement is signed. (Title 22, CCR §35333(h))

> If the agency and the adoptive parents cannot agree on an AAP benefit, the agency shall instruct the county to send a Notice of Action denying benefits and specifying the reasons for the denial. (Title 22, CCR §35333(h))

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926-4B

According to the terms of the settlement in *Yarbrough v. Saenz*, the Department of Social Services and counties will immediately:

1. Cease considering Supplemental Security Income (SSI) as unearned income for children who are receiving federal [emphasis added] Title IV-E AAP benefits.

For federally eligible children who are currently receiving an AAP benefit that was adjusted by their SSI grant, at the time of the next scheduled reassessment the adoption agency must recalculate the maximum available AAP benefit without considering the SSI as unearned income. The adoption agency should advise families that they may apply to receive the new maximum AAP benefit available. The adoption agency should also advise families that the federal Social Security Administration (SSA) might deduct the AAP benefit from their child's SSI grant.

2. Inform families that they must report to the SSA any AAP benefits received on behalf of their federally eligible adopted child. The adoption agency should advise adoptive parents that the SSA might deduct the AAP benefit from their child's SSI grant.

(All-County Letter No. 02-56, July 25, 2002 implementing *Yarbrough v. Saenz*, Ventura County Superior Court, Case No. CIV 196979)

926-6

If an AAP child is a client of a California Regional Center (CRC) for the Developmentally Disabled, the maximum rate shall be the foster family home rate formally determined for the child by the Regional Center using the facility rates established by the California Department of Developmental Services. (Title 22, California Code of Regulations (CCR) §35333(b)(1)(A)4., renumbered to §35333(c)(1)(C) effective December 1, 2000) CRC clients who leave California are eligible to receive AAP benefits based on the most recent level of need assessed by the CRC. (Title 22, CCR §35333(c)(1), as revised effective September 6, 2001)

926-7

Prior to the *Mark A. v. Davis* lawsuit, adoption agencies use the statewide median income, as determined by the U.S. Department of Housing and Urban Development (HUD), as a guideline in negotiating the amount of AAP benefits required to meet a child's needs for which other resources are unavailable. In 1997, the following chart reflects the adjusted median income for family size:

Family size	Medium Income	% of base
2	40,000	80%
3	45,000	90%
4	50,000	100%
5	54,000	108%
6	58,000	116%
7	62,000	124%
8	66,000	132%

For families of more than eight members, add \$4,000 for each additional person.

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(All-County Information Notice No. I-42-97, July 17, 1997)

The use of statewide median income guidelines was prohibited following the settlement in *Mark A. v. Davis*. (All-County Letter No. 99-101, December 1, 1999)

926-8

On December 1, 1999 the CDSS informed counties, and public and private adoption agencies, that there had been a settlement in the *Mark A. v. Gray Davis, Rita Saenz, and CDSS* case. The terms of the settlement required the CDSS to immediately cease requiring:

1. The use of the statewide median income guideline to determine AAP eligibility and payment amounts.
2. The production of evidence of income and expenses as a condition of receiving AAP benefits upon initial application or as part of the recertification process.
3. The reduction of AAP payments without the agreement of the adoptive parents for any reason other than (a) the child's ineligibility because of age; (b) the parents no longer being legally responsible for, or providing support to, the child; or, (c) the AAP payment amount exceeding the amount which would have been paid for the child in a foster family home.
4. Prospective adoptive families to be informed that eligibility for adoption assistance is based on the income and financial resources of the adoptive parents.

(All-County Letter No. 99-101, December 1, 1999; *Mark A. et al. v. Davis*, United States District Court, E.D. Cal., Case No. CIV-S-98-0041 LKK DAD)

926-8A

Based on the settlement in the *Mark A. et al. v. Davis* lawsuit, all applications and recertifications for AAP benefits shall be processed as follows:

1. There shall be no means test used to determine an adoptive family's benefits under the AAP, including the use of the statewide median income to determine payment amounts.
2. The amount of an adoption assistance cash benefit, if any, shall be a negotiated amount based upon the needs of the child and the circumstances of the family.

"Circumstances of the family" means "the family's ability to incorporate the child into the household in relation to the lifestyle, standard of living, and future plans and to the overall capacity to meet the immediate and future needs, including education, of the child."

For purposes of negotiating the amount of AAP benefits, agencies and CDSS Adoptions district offices should be guided by the legislative intent expressed in statutes governing the program, including Welfare and Institutions Code §16115.5. Counties and district offices are encouraged to keep in mind the ultimate goal of facilitating the adoption of a

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child when they negotiate with families, as long as the negotiated amount of benefits does not exceed the amount of foster care maintenance that the child would receive in a foster family home. Similarly, at the point of periodic recertification, any renegotiations of AAP benefits should be based on the child's current needs.

3. After an AAP agreement has been signed, the adoptive parents will continue to receive benefits in the agreed upon amount unless one of the following occurs;

- The adoptive parents are no longer legally responsible for the support of the child.
- The child is no longer receiving support from the adoptive family.
- The adoption assistance payment exceeds the amount that the child would have been eligible for in a foster family home.
- The adoptive parents demonstrate a need for an increased payment.
- The adoptive parents voluntarily agree to reduce or terminate payments.
- The adopted child has an extraordinary need that was not anticipated at the time the amount of the adoption assistance was originally negotiated.

4. Upon request, all families shall have their current AAP benefits reassessed consistent with the requirements set forth in Paragraphs 1, 2, and 3 above.

(All-County Letter No. 99-101, December 1, 1999)

926-9

Prior to September 6, 2001, state regulations required that the agency, as part of the negotiation involved in establishing the AAP payment, shall inform the adopting parents that the AAP benefit does not include payment for:

1. Respite care.
2. Educational services.
3. Capital improvements to real property, such as room additions.
4. Purchase or lease of vehicles.
5. Health care services, including medications.
6. Attorney's fees.

(Title 22, CCR §35333(e)(6)(C), revised as of September 6, 2001) The regulations were revised to provide that the agency was simply to advise the adoptive parents that the AAP benefit does not include payment for any specific good or service, but is intended to assist the adoptive parent in meeting the child's needs. (Title 22, CCR §35333(e)(6)(A))

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926-10 ADDED 8/05

Pursuant to MPP Section 45-804.32, AAP payments are to be paid prospectively for the current month. They are to be delivered monthly and received by the first day of the calendar month with the exception of initial payments and late recertifications as specified in MPP Sections 45-804.322 and 45-805.31.

(All County Information Notice I-32-05, July 13, 2005)

927-1

Adoptive parents of AAP children shall report changes in the family's or child's circumstances, including financial status changes, to the agency responsible for determining the child's eligibility and benefit level.

Failure to report these changes may result in current and future reduction of AAP payments to recover any resulting overpayments.

An overpayment may also occur when the child does not receive the services for which benefits were authorized.

The CDSS may recover any overpayments, and shall develop regulations that establish recoupment procedures, including appropriate notice and appeal rights. (Welfare and Institutions Code §16121.05, added effective October 11, 1993, and revised effective January 1, 2000)

Overpayment recovery regulations were issued effective November 1, 1994 and are set forth in §45-808.

927-2

State law provides that the department may recover any overpayments of financial assistance under the AAP, and shall develop regulations that establish the means to recoup them, when either of the following applies:

- (1) The adoptive parents are no longer legally responsible for the support of the child.
- (2) The child is no longer receiving support from the adoptive family.
- (3) The adoptive family has committed fraud in its application for, or reassessment of, the adoption assistance.

(W&IC §16121.05, as revised effective January 1, 2000)

927-2A

Prior to January 1, 2000, the following rules applied to AAP overpayments:

An AAP overpayment exists when aid is paid and the child is ineligible for assistance because:

1. The child is too old to receive benefits (18 or 21 years of age);
2. The adoptive parent discontinues support of the child;

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3. The adoptive parent(s) ceases to be legally responsible for the child due to the child's emancipation or relinquishment, or because the adoption is vacated or parental rights are terminated.

An overpayment also occurs when the adoptive parent does not provide the services for which benefits were authorized, or when the AAP payment exceeds the foster care payment which would have been paid on behalf of the child if the adoption had not occurred. (Title 22, California Code of Regulations (CCR) §35344(a), effective November 1, 1994, invalidated by W&IC §16121.05)

927-2B

An AAP overpayment may occur when:

(1) The adoptive parent receives aid for the child after the child becomes ineligible for assistance because:

(A) The child has become 18 years old; or when the agency has determined the child's condition warrants aid until 21, the child reaches that age.

(B) The adoptive parent is no longer supporting the child.

(C) The adoptive parent is no longer legally responsible for the support of the child.

(2) The adoptive parent has committed fraud in the application for, or reassessment of, AAP benefits.

(3) The AAP payment exceeds the FC payment which would have been paid on behalf of the child if the child had not been placed for adoption.

(Title 22, CCR §35344(a), as revised effective December 1, 2000)

927-3

The agency authorizing an AAP payment shall compute any overpayment by subtracting the correct AAP payment from the amount of assistance actually provided. The agency shall inform the county responsible for payment of the reason for the overpayment and the overpayment computation. (Title 22, CCR, §35344(b) and (c))

927-4

Overpayment recoupment regulations were issued in the AAP program on November 1, 1994.

These regulations provide that recovery shall be made from the adoptive parent(s) who signed the Adoption Assistance Agreement form, AD 4320. Recovery can be made by grant adjustment, demand for repayment, civil judgment, or by the county arriving at a reasonable settlement of its repayment demand with the adoptive parent(s).

Recovery from an adoptive parent(s) no longer receiving aid is not required when the cost of collection would exceed the amount of recovery.

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(§§45-808.1, .2)

927-5

AAP overpayments may be recovered through grant adjustment.

The amount of the adjustment shall not exceed an amount which would cause the adoptive family's net income to fall below the AFDC Minimum Basic Standard of Adequate Care (MBSAC) as set forth in §44-315.311.

If the current AAP payment is insufficient to recover the entire overpayment, the remaining overpayment shall be subtracted from the AAP payments received during the succeeding six months or less, or by the end of the child's eligibility for AAP benefits, whichever occurs first.

(§45-808.21)